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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/826,243	04/04/2001	Kenjiroh Ikeda	14472	2684
23389	7590	08/13/2004	EXAMINER	
SCULLY SCOTT MURPHY & PRESSER, PC			KISS, ERIC B	
400 GARDEN CITY PLAZA			ART UNIT	PAPER NUMBER
GARDEN CITY, NY 11530			2122	

DATE MAILED: 08/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/826,243	IKEDA, KENJIROH
Examiner	Art Unit	
Eric B. Kiss	2122	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 04 April 2001.  
 2a) This action is FINAL.                            2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-10 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-10 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 04 April 2001 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

## DETAILED ACTION

1. Claims 1-10 have been examined.

### *Drawings*

2. Figure 2 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the Examiner, the Applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### *Claim Rejections - 35 USC § 112*

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 3-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 3 recites, "...if the result of said examination indicates that there is no appropriately improved source."

The term "appropriately" in claim 3 is a relative term which renders the claim indefinite. The term "appropriately" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. The phrase "appropriately improved source" is rendered indefinite by the use of the aforementioned term.

Claims 4-10 are rejected based on inherited parent claim limitations recited in claim 3 and rejected as set forth above.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by the NETSCAPE COMMUNICATOR client software, as discussed in "Netscape Accelerates Communicator Evolution with First Release of Next-Generation Communicator Source Code to Developer Community via Mozilla.org," 1998 (hereinafter *Press98*); "Netscape

Communicator Open Source Code White Paper," 1998 (hereinafter *White98*); "Netscape Communicator Source Code Frequently Asked Questions," 1998 (hereinafter *FAQ98*); and "Netscape Product List," 1998 (hereinafter *Product98*).

As per claims 1 and 2, the practices described regarding the NETSCAPE COMMUNICATOR client software include: practicing a first sale of the software (see, for example, *Product98*, describing how, in 1998, the Communicator Standard Edition software was freely available for download, but could be purchased on CD for \$10, and additionally, a Communicator Professional Edition software package could be purchased for \$29); determining whether or not improvements in said software that is on sale are required (see, for example, the second "answer" presented on page 1 of *FAQ98*, which discloses the acknowledgement that a better Communicator product with more features is possible and desirable; see also "Benefits of Open Source Development" on pp. 6-7 of *White98*); inviting when said improvements are required, an improved source by making public via a network a sales information, said sales information includes a specification of a software component, a source program of said software, and sales figures regarding said software already sold (see, for example, the first paragraph of *Press98*, describing the release of the Communicator source code on the mozilla.org web site; and *Product98*, indicating a price (a sales figure) associated with the Communicator product) and an agreement information associated with said software (see, for example, "Mozilla and Netscape Public Licenses" on pp. 4-5 of *White98*); performing examination on the improved source applied in response to said invitation in said inviting step (see, for example, "The Role of Mozilla.org" on pp. 3-4 of *White98*); and carrying out a version-

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upgrade to incorporate in said software the improved source that has been determined to be accepted, as a result of said examination performed in said performing step (see, for example, "The Role of Mozilla.org" on pp. 3-4 of *White98*; and the third "answer" on p. 2 of *FAQ98*).

### ***Conclusion***

7. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Eric B. Kiss whose telephone number is (703) 305-7737. The Examiner can normally be reached on Tue. - Fri., 7:30 am - 5:00 pm. The Examiner can also be reached on alternate Mondays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Tuan Dam, can be reached on (703) 305-4552. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

EBK/EBK  
August 4, 2004

WEI Y. ZHEN  
PRIMARY EXAMINER

Best Available Copy